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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

)
Amendment of Part 73 of the)
Commission's Rules Concerning)
the Filing of Television Network)
Affiliation Contracts)

MM Docket No. 95-40

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REPLY COMMENTS OF AFLAC BROADCAST GROUP, INC.

AFLAC Broadcast Group, Inc. ("AFLAC"), by its counsel, hereby submits its Reply Comments in response to the initial Comments filed in the above-captioned proceeding. Along with the Network Affiliated Stations Alliance ("NASA") and the Media Access Project ("MAP"), AFLAC supports retention of the current filing requirement for network affiliation agreements.

Consistent with that view, and for the reasons set forth below, AFLAC submits that the positions of ABC, CBS and NBC ("the networks"), each of which has urged the Commission to eliminate the current filing requirement for network affiliation agreements, are without factual basis. If adopted, the networks' position would effectively cripple any real enforcement of the Commission's network/affiliate rules.

I. THE FILING REQUIREMENT FOR NETWORK AFFILIATION AGREEMENTS CONTINUES TO SERVE THE PUBLIC INTEREST AND THE NETWORKS HAVE FAILED TO DEMONSTRATE TO THE CONTRARY.

As set forth in its Informal Comments, AFLAC believes that the filing requirement for network affiliation agreements

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should be retained in order to help preserve the current balance of power between the networks and their affiliated stations and in order to enforce the substantive requirements of the Commission's network/affiliate rules.

The networks, on the other hand, urge the elimination of the filing requirement. But it is apparent from their Comments that they do not intend to stop merely with the elimination of the filing requirement. Rather, they view that as a first step to eliminating or diluting the rest of the Commission's network/affiliate rules.

In support of their position, the networks assert that changes in the video marketplace have weakened their position both overall and vis-a-vis their affiliates and that the network/affiliate rules no longer are necessary. Further, they posit that continuing to provide the public and the network affiliated stations with ready access to affiliation agreements will facilitate anticompetitive behavior on the part of affiliates.

For the reasons set forth below, the networks' arguments are wholly without merit and should be rejected.

A. There Is No Support For The Networks' Claims That Changes In The Marketplace Have Weakened Their Relative Power Versus Their Affiliates and That The Affiliation Agreement Filing Requirement Fosters Anticompetitive Conduct Among The Affiliated Stations.

The networks supply few hard facts to support their claim that changes in the marketplace have weakened their

position vis-a-vis their affiliates. They do, however, argue that the emergence of Fox and other new networks and the recent Fox/New World affiliation changes have eroded their bargaining power versus their affiliated stations. See generally CBS Comments at 2-4, 6; NBC Comments at 2; ABC Comments at 3.

Significantly, the networks ignore important changes to the underlying structure of the industry, generally, and the network/affiliate relationship, specifically. The elimination of the financial interest and syndication rules, the elimination of the two-year term limit for affiliation agreements, and the congressionally mandated changes in the national and local ownership rules that now appear likely to be enacted will increase the size and economic power of the networks in relation to their affiliates to a far greater extent than the presence of additional network voices will reduce them.^{1/}

Moreover, the networks have ignored the fact that these regulatory and legislative changes, and the further changes which they now seek in the network/affiliate rules, will stifle the emergence of any such further competition. For example, the Fox network never would have gotten off the ground had that network

^{1/} The conduct of the networks in recent network/affiliate negotiations concerning network affiliation agreements also belies their claims that their bargaining power versus their affiliates has been reduced. In those negotiations, the networks are taking tougher positions with affiliates on a broad range of important issues, such as program clearances and compensation, and are pressuring affiliates to execute side letters to deal with critical financial and other issues, thus ignoring the Commission's current filing requirement. See NASA Comments at 5-6, 7; MAP Comments at 9-10; AFLAC Comments at 3, 5, 7-9.

faced the combined effect of the 10-year affiliation agreements that are now becoming the industry standard and the proposed increased in the national ownership cap (which will permit networks to own a much higher percentage of their distribution channels).

Particularly in view of the cumulative effect of these changes, which will significantly increase the economic power of the networks, AFLAC submits that now is not the time to abandon the filing requirement for network agreements and the other network/affiliate rules that protect and preserve the editorial discretion and judgment of local television stations. To the contrary, at a time when the relative strength of the networks versus the affiliates is on the rise, it is more important than ever for the Commission, the industry and the viewing public to maintain an effective means of monitoring the network/affiliate relationship.

Equally insupportable are the networks' allegations that the network agreement filing requirement encourages collusive and anticompetitive conduct on the part of affiliated stations. CBS Comments at 5; ABC Comments at 4-5. AFLAC agrees with NASA and MAP that it is completely contrary to traditional market analysis, particularly in the absence of any evidence to the contrary, to suggest that reducing the amount of information available in the market will produce anticompetitive behavior or effects. NASA Comments at 11-12; MAP Comments at 6. To the contrary, elimination of the filing requirement is likely to

facilitate among the networks the same type of anticompetitive conduct of which the networks themselves complain -- because only the networks will have complete information concerning the terms of their agreements with affiliates.

In addition, NBC and ABC's suggestion that network affiliation agreements are not significant because they are simply "one of many" program supply agreements is ludicrous. NBC Comments at 2; ABC Comments at 4. Network affiliation agreements represent the majority of an affiliate's programming, not uncommonly 70-80 percent, and the majority of an affiliate's revenues. NASA Comments at 8, 15. There is no other programming relationship that influences an affiliate's behavior to the same extent as a network affiliation agreement. To classify this relationship as just another program supply contract portrays a completely inaccurate picture. See generally AFLAC Comments; see also NASA Comments at 6-7, 8; MAP Comments at 8, 10-11.

Moreover, even assuming, as ABC alleges, that the viewing public is interested primarily in what the station broadcasts, the terms of a station's network affiliation agreement are highly relevant to the programming that the station carries. For example, AFLAC believes that the viewing public, as well as the Commission, would be very interested in knowing that a station carried a network program, such as "NYPD Blue," rather than the local high school championship football game, because its network affiliation contract precluded it from preempting network programming except for breaking news stories or because

its network agreement imposed a financial penalty upon the station for preempting the network more than a limited number of times per year.

ABC's Comments, and those of the other networks, ignore the relevance of such information. Indeed, what is largely missing from the networks' Comments is any real recognition of the public interest responsibilities of individual station licensees or of the impact of proposed changes in the network/affiliate rules upon the viewing public.

The fact of the matter is that, if the Commission is going to continue to hold individual station licensees responsible for the programming that they broadcast, it must act to protect their right and responsibility to make individual judgments concerning that programming. AFLAC submits that the affiliation agreement filing requirement, and the rest of the Commission's network/affiliate rules, provide one of the last effective means of protecting that right against encroachment by the networks.

B. The Requirement For Filing Network Affiliation Agreements Does Not Impose A Significant Burden on Licensees.

Contrary to the networks' assertions, CBS Comments at 4, NBC Comments at 3, the requirement to file network affiliation agreements does not impose a significant paperwork burden on licensees. MAP Comments at 4-5. When reduced to a single document, the agreements and subsequent amendments, typically, are neither lengthy nor complex. See NASA Comments at 10. The

current rules require only that affiliation agreements be filed with the Commission and placed in the station's public inspection file; no analysis or explanation is required. Thus, at most, the current rules require that the agreements be reproduced and filed. This is hardly a significant "burden."

The networks also ignore the effect of the elimination of the two-year term limit on affiliation agreements. The networks are certainly aware of this change because they are insisting on longer-term agreements.^{2/} By definition, increasing the term of affiliation agreements means that agreements will be executed less often, thus reducing the paperwork requirements for both licensees and the Commission. This factor alone will further reduce the already de minimis cost of filing affiliation agreements.^{3/}

^{2/} CBS recently announced the signing of three ten-year affiliation agreements. See Communications Daily, July 10, 1995 at 6.

^{3/} Although AFLAC does not believe that the filing requirement imposes a significant burden on individual licensees, AFLAC recognizes that the Commission itself must receive and file these agreements. AFLAC believes that the public interest benefits of maintaining a file of all network affiliation agreements in a central location in Washington more than outweighs the relatively low cost to the Commission. Nevertheless, if the Commission concludes that it no longer has the resources to undertake that task, AFLAC submits that the Commission should, at a minimum, retain the requirement that network affiliation agreements be placed in station public inspection files. In that way, there will at least be some opportunity for other stations and the viewing public to gain access to the information.

II. MAP IS CORRECT THAT THE COMMISSION'S PROPOSAL DOES NOT ADEQUATELY TAKE INTO ACCOUNT THE INTEREST OF THE VIEWING PUBLIC.

MAP states that eliminating the requirement to file affiliation agreements would hinder the public's ability to exercise its rights to participate in Commission proceedings and to assist in ensuring that licensees act in the public interest. MAP Comments at 2-4. AFLAC agrees with MAP that relying on the public complaint process to enforce Commission rules and policies is inconsistent with reducing the amount of information readily available to the public. See AFLAC Comments at 4, 8.

For example, ABC states that agreements should be made available only when "legitimate questions" are raised, and denies that public availability of the agreements assist enforcement. ABC Comments at 2; but see MAP Comments at 3. It defies logic to understand how legitimate questions can be raised by the public when the agreements are no longer available for inspection.

Under the Commission's proposal, the public would not be entitled to review an affiliation agreement unless a member of the public could convince the Commission to request a copy of the agreement. Without access to the agreements themselves, there is no realistic way that a member of the general public could be expected to make the factual showing that would be deemed necessary to justify access to the agreements.^{4/} The time and

^{4/} As MAP stated in its Comments, a system of complaint-initiated requests for affiliation contract information

energy involved for a member of the public to obtain a copy of an affiliation agreement, and the extremely low likelihood of success, would virtually eliminate public access to network affiliation agreements; the complaint process itself thus would be rendered futile and meaningless.

As MAP points out, in the absence of enforcement actions (or at least the realistic threat of such actions) by members of the public acting as "private attorneys general," there would be a significantly greater likelihood that abuses of network power would go undetected and uncorrected. AFLAC submits that such a result would be completely contrary to the public interest.

will prove wholly unworkable, because there would be no mechanism to put the public on notice of objectionable elements in affiliation agreements. No other documents are available to the public that provide the information available in affiliation agreements. Instead, a member of the public who suspects objectionable material exists in the affiliation contract could only find out after filing a complaint. . . . For complaints which specifically allege network abuse, a public complainant would face the formidable task of establishing a prima facie case in a complaint without the benefit of the document that fixes the legal rights and liabilities of the parties.

MAP Comments at 4.

CONCLUSION

For the foregoing reasons, AFLAC respectfully urges the Commission to retain the requirement that network affiliation agreements be filed with the Commission.

Respectfully submitted,

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